IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4187 OF 2004

Shri Sabastine D'Conha,Adult,)
Room No.4,House No.340, Hall)
Village,Kurla,Mumbai 400 070.)...Petitioner.
(Orig.Appellant.)

V/s.

1. Shri Victor Ignatious @ Inas)
Creado,Adult,)
2A.Sabastine I. Creado)
2. Shri Valantin Ignatious @ Inas)
Creado,adult,)
all at Creado Bunglow,House)
No.364, Hall Village,Kurla)
(West), Mumbai 400 070)...Respondents.
(Orig.Respondents)

Shri P.Y.Kulkarni, Advocate for Petitioner.

Shri M.H.A.Sayyed, Advocate for Respondents.

CORAM: D.G.KARNIK,J

DATE : 23rd August,2004.

P.C. :

1. Rule. By consent Rule made returnable forthwith.

2. By this petition, the petitioner interalia challenges the order dated 27th January, 1999, passed

by the learned Small Causes Judge, Mumbai, dismissing the Standard Rent Application bearing RAN No.184/SR/83. The Standard Rent Application was fixed for hearing on 27th January, 1999. The petitioner was present but his advocate had gone out of town to attend a funeral. The petitioner therefore, orally applied to the Court for an adjournment. The prayer was rejected. The Court dismissed the Standard Rent Application purporatingly by passing an order under Order 17 Rule 3 of the Code of Civil Procedure. Application for setting aside that order was dismissed on the ground that that being an order under Order 17 Rule 3 of the Code of Civil Procedure, it could not be set aside under Order 9 Rule 13 of the Civil Procedure Code. The appeal filed by the petitioner was also dismissed on the ground that the appeal was not maintainable. Hence the petitioner has filed this petition, challenging all the aforesaid orders.

2. It cannot be disputed that there was sufficient cause for the advocate for the petitioner to remain absent as he was required to go out of town to attend a funeral. In the circumstances, the application for adjournment made on 1st January, 1999 ought not have been rejected. The rejection of the application has resulted in injustice and that is

required to be redressed.

3. Hence petition is allowed. Impugned order of the Small Causes Court dated 27th January, 1999 dismissing the Standard Rent Application RAN No. 184/SR/1983 is set aside and the matter is remanded back to the trial Court. Standard Rent Application stands restored. The Trial Court is directed to hear the Standard Rent Application on its own merits.

4. The learned Counsel for the Respondents states that the Petitioner has filed another Standard Rent Application. In view of the restoration of the First Standard Rent Application, the learned Advocate for the Petitioner undertakes to withdraw the Second Standard Rent Application. The undertaking is noted and accepted.

(D.G.KARNIK,J)